))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6959 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDUJI SOMAJI LUHAR

Versus

COMMISSIONER OF POLICE AHMEDABAD

Appearance:

1. Special Civil Application No. 6959 of 2002

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MS NANDINI JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 22/10/2002

ORAL JUDGEMENT

The petitioner has been detained under the

provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 28-5-2002 passed by the Police Commissioner, Ahmedabad City, and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and the learned AGP for the State. Also perused the record. Learned advocate for the petitioner has submitted that only one offence has been registered against the detenu at Prohibition East Police Station No.1255/2002 dated 25-5-2002. Drawing my attention towards page 19 of the compilation, Ms.Kachhavah has contented that when the order of detention was passed, the detenu was in judicial custody which aspect ought to have been considered by the authority while passing the detention order. In this connection, she has drawn my attention towards the case of Amritlal and Others Vs. Union Govt. Through Secy., Ministry of Finance and Others, 2001 SCC (Cri) 147 wherein it was held at Head note as under:

> "Preventive Detention--Detention order-Subjective satisfaction--Detenu already in jail-Detaining authority must be satisfied on the basis of available cogent material about likelihood of the detenu being released on bail and not merely about likelihood of his moving application for bail--In absence of such satisfaction detention order cannot be sustained--Prevention of Illicit Traffic in Narcotic drugs and Psychotropic Substances act, 1988, S.3(1)"

She has submitted that the petitioner is a co-detenu of an offence wherein another detenu has been released by this Court in Special Civil Application No.6782 of 2002 by the judgment and order dated 22-10-2002 and hence, present detenu should also be granted same benefit.

4. It seems that there is non-application of mind on the part of detaining authority as detenu was in judicial custody when the impugned order of detention was passed and hence, in view of the judgment rendered in Amritlal (supra), the continued detention of the detenu is illegal and the same cannot be sustained. Since a co-detenu has

been released by this Court, on the ground of parity also, the detenu is entitled to be released.

5. The petition is allowed. The impugned order of detention dated 28-5-2002 passed against the detenu is hereby quashed and set aside. The detenu Yusufbhai Piramahmad Shaikh is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

radhan/